





Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
494-3373

J. Robert Haines  
Zoning Commissioner

April 15, 1988

# NOTICE OF HEARING



Dennis F. Rasmussen  
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Exception  
CASE NUMBER: 88-485-X  
NE/C York Road and Old Padonia Road  
(9712 York Road)  
8th Election District - 3rd Councilwards  
Petitioner(s): Estate of Angela G. O'Connor  
HEARING SCHEDULED: FRIDAY, JUNE 10, 1988 at 9:00 a.m.

Special Exception: Service garage use in the two buildings upon the premises pursuant to ECZ 230.15.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines  
Zoning Commissioner  
Date: May 20, 1988  
FROM: P. David Fields, Director  
Office of Planning and Zoning  
SUBJECT: Zoning Petition 88-485-X

This office is not opposed to the granting of this request.

P. David Fields  
F. David Fields, Director  
Office of Planning and Zoning

PDF/jat  
cc: Shirley Hess, People's Counsel  
J. G. Howell  
Zoning File

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MAY 24 1988

ZONING OFFICE

88-485-X

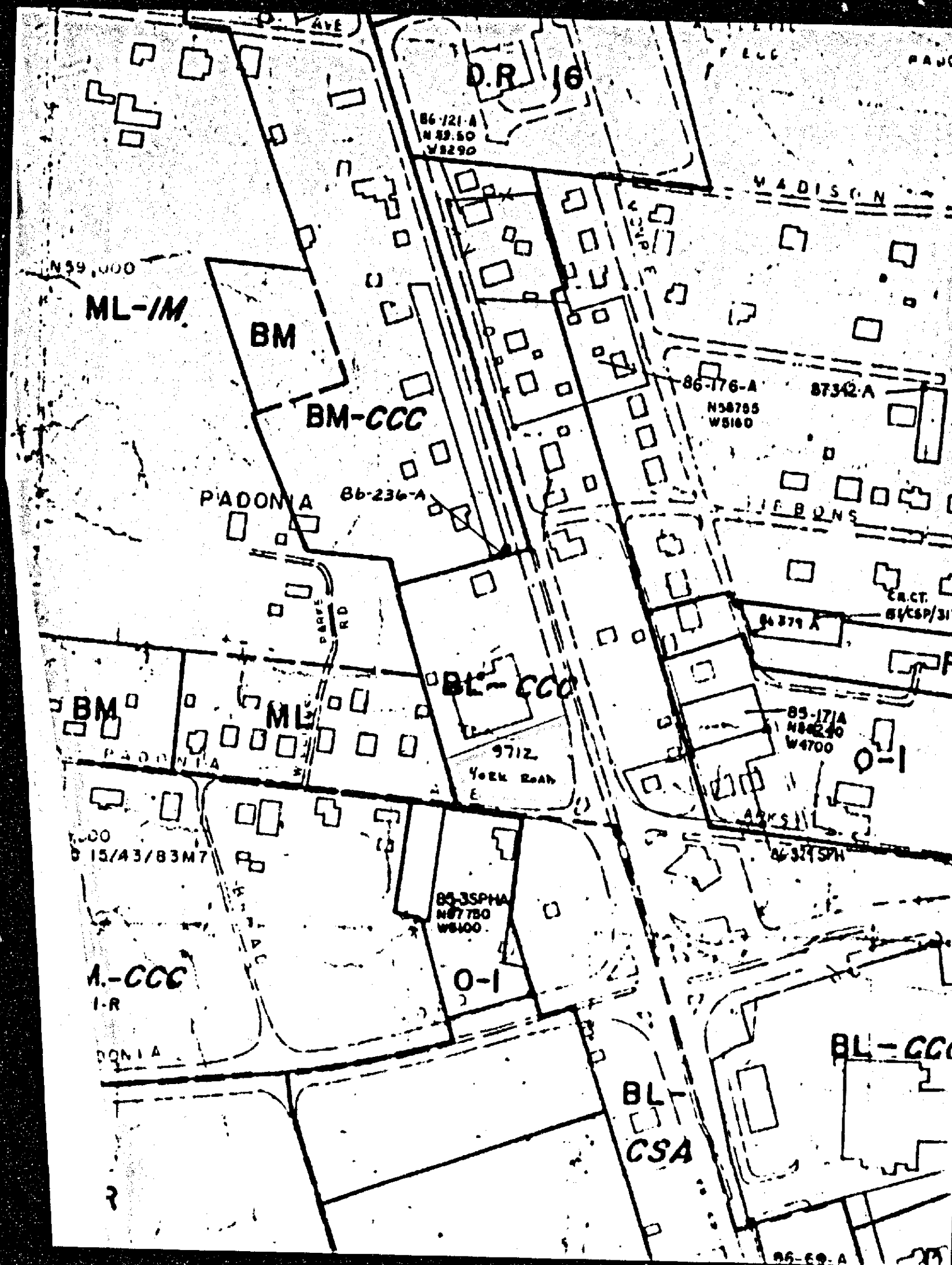
### BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Your petition has been received and accepted for filing this  
30th day of March, 1988.

J. Robert Haines  
ZONING COMMISSIONER

Petitioner: Ray Brehm, et ux  
Petitioner's Attorney: James E. Dyer  
Received by: James E. Dyer  
Chairman, Zoning Plans Advisory Committee



Baltimore County  
Fire Department  
Towson, Maryland 21204-2586  
494-4500

Paul H. Reincke  
Chief

April 5, 1988

J. Robert Haines  
Zoning Commissioner  
Office of Planning and Zoning  
Baltimore County Office Building  
Towson, MD 21204

Re: Property Owner: Estate of Angela G. O'Connor, Contract  
Purchaser Raymond E. Brehm, et ux  
Location: NE/C York Rd., Old Padonia Road

Item No.: 336 Zoning Agenda: Meeting of 3/29/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- ( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or \_\_\_\_\_ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- ( ) 2. A second means of vehicle access is required for the site.
- ( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.
- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt. [Signature] 4-5-88  
Planning Group  
Special Inspection Division

Noted and  
Approved:

John E. O'Neill  
Fire Prevention Bureau

/s/

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 17, 1988

COUNTY OFFICE BLDG.  
111 W. Chesapeake Ave.  
Towson, Maryland 21204

Mr. & Mrs. Ray Brehm  
9712 York Road  
Cockeysville, Maryland 21030

RE: Item No. 336 - Case No. 88-485-X  
Petitioners: Ray Brehm, et ux  
Petition for Special Exception

Dear Mr. & Mrs. Brehm:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:dt

Enclosures

## BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

3/25/88  
Date

Zoning Commissioner  
Office of Planning and Zoning  
County Office Building  
Towson, Maryland 21204

Zoning Item # 336, Zoning Advisory Committee Meeting of March 29, 1988  
Property Owner: Estate of Angela G. O'Connor  
Location: NE/C York Rd. and Old Padonia Rd. District 3  
Water Supply: Metro Sewage Disposal: Metro

### COMMENTS ARE AS FOLLOWS:

- ( ) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review and approval.
- ( ) Prior to new installation of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 494-3775, to obtain requirements for such installations before work begins.
- ( ) A permit to construct from the Bureau of Air Quality Management is required for such items as spray paint processes, underground gasoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.
- ( ) A permit to construct from the Bureau of Air Quality Management is required for any charcoal operation which has a total cooking surface area of five (5) square feet or more.
- ( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.
- ( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, saunas, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety, two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Recreational Hygiene Section, Bureau of Regional Community Services, 494-3811.
- ( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.
- (X) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.
- ( ) Prior to raising of existing structure/s, petitioner must contact the Division of Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestos, 494-3775.
- (X) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have prior to removal or abandonment, owner must contact the Division of Waste Management at 494-3768.
- ( ) Soil percolation tests, have been \_\_\_\_\_, must be \_\_\_\_\_ conducted.
- ( ) The results are valid until \_\_\_\_\_.
- ( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.
- ( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.
- ( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test ( ) shall be valid until ( ) is not acceptable and must be repeated. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.
- ( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.
- ( ) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted.

Other: Drainage from interior service bays is to be directed to sanitary sewer via oil separator.

Karen M. Murray  
BUREAU OF WATER QUALITY AND RESOURCE MANAGEMENT



## Maryland Department of Transportation State Highway Administration

Richard H. Trainor  
Secretary  
Hal Kassoff  
Administrator

March 31, 1988

RE: Baltimore County  
Padonia Auto Center  
Angela O'Connor  
N/E corner York Road  
Maryland Route 45  
and Old Padonia Road  
Item #336

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204  
Attn: James Dyer

Dear Mr. Haines:

After reviewing the submittal for a special exception for a service garage use in the two buildings upon the premises, the State Highway Administration-Bureau of Engineering Access Permits finds the plan generally acceptable.

If you have any questions, contact Larry Brocato of this office (333-1350).

Very truly yours,

Gregory J. Mills, Jr.  
Acting Chief-Bureau of  
Engineering Access Permits

LB/ee

cc: J. Ogil  
Animuth Consultants

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APR 5 1988

ZONING OFFICE

My telephone number is (301) 333-1350

Typewriter for Impaired Hearing or Speech  
383-7555 Baltimore Metro - 845-0431 D.C. Metro - 1-800-492-5082 Statewide Toll Free  
707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County  
Department of Public Works  
Bureau of Traffic Engineering  
Courts Building, Suite 405  
Towson, Maryland 21204  
494-3554

May 6, 1988

Mr. J. Robert Haines  
Zoning Commissioner  
County Office Building  
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number  
336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

Very truly yours,

Stephen L. Weber, P.E.  
Assistant Traffic Engineer

SEW/RF/pml-b

RECEIVED  
MAY 11 1988

ZONING OFFICE







MELVIN KABIK, et ux  
Appellant

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY

vs.

BALTIMORE COUNTY BOARD  
OF APPEALS

CASE NO. 89-CG-1736

Appellee

## OPINION and ORDER

A hearing in this Appeal from the Board of Appeals for Baltimore County (hereinafter referred to as "Board") was held and argument of Counsel for all parties presented on September 21, 1989. The Court reviewed the transcript of the proceedings before the Board and the various Exhibits received, the Memoranda submitted by Counsel and the Opinion of the Board dated April 20, 1989.

The Appellants are property owners who filed a Petition for Special Exception seeking to erect a twelve foot by twenty-five foot outdoor advertising sign on the north side of Frederick Road between Prospect Avenue on the west and the intersection of Paradise Avenue on the east. The property upon which the sign is proposed is at the west end of a commercial shopping strip which runs along the north side of Frederick Road and is otherwise surrounded by residential zoning and use on all sides. (T. 15-18) The property on the south side of Frederick Road across from the neighborhood shopping strip is zoned and used residentially. (T. 32-34) The proposed sign would face

toward east bound traffic on Frederick Road and would be illuminated by mercury lamp directed from the pole into the sign. (T. 28)

The Board of Appeals, in denying Appellant's Special Exception, determined that the proposed sign created an adverse effect upon the unique property surrounding the proposed site which was different in kind or degree than that inherently associated with such a use regardless of its location within the commercial zone, and would not only dwarf the subject site by its size and illumination, but would also impact the surrounding residential properties. (Opinion p. 4)

As a result of these findings, notwithstanding compliance with Baltimore County Zoning Regulation 413.3, the Board held that Appellants had failed to show that their proposed use was not detrimental to the health, safety and general welfare of the community, and denied Appellant's Petition. (Opinion p. 4)

Appellants raise two issues on appeal, namely:

- 1) That the Board erred in admitting into evidence the Paradise-East Catonsville Enhancement Study; and
- 2) That the Board's denial of the Special Exception was unsupported by any probative evidence, and, consequently, was arbitrary and capricious.

Over Appellants' objection (T. 61-63), the Board admitted into evidence the Paradise-East Catonsville Enhancement Study and considered testimony related thereto presented by representatives of Baltimore County's Office of Planning and Zoning and Economic

Development Commission. Appellants' contention with respect to the inadmissibility of the revitalization plan hinges on the "hearsay nature" of the Plan and the inability of Appellants to cross-examine the Study's author.

Appellants admit that the rules of evidence are not applied as strictly in administrative proceedings as in judicial trials. Appellants contend, however, that when the Board holds a hearing and decides disputed adjudicative facts based upon evidence and a record, a reasonable right of cross-examination must be allowed the parties.

In support of their contention, Appellant's cite Tron vs. Prince George's County, 69 Md. App. 256. In Tron, the Administrative Board admitted into evidence the reports of three doctors who had examined the Appellant, but whose examinations were confined

"...to Appellant's physical condition and did not address the issue of whether Appellant's disability was service related or not. The booklet, however, did contain an Opinion from the Medical Advisory Board's Chairman, Dr. Weintraub. Despite never having seen, examined or treated Appellant, Dr. Weintraub concluded, based on the reports of Drs. Mendelsohn, Absendschein and Lourie, that Appellant's disability was not service-connected. This booklet was introduced into evidence over the objection of Appellant's Counsel who argued, inter alia, that there existed no opportunity to cross-examine any of the doctors whose views were not elicited in live testimony." (pp. 260-261)

Thus, the testimony presented in Tron, supra, all of which was presented in the booklet and by way of medical reports, was the

only testimony presented against Appellant and was the very basis of the decision of the Administrative Board which denied Appellant relief. (pp. 260-261)

It was in the above context where that Court of Special Appeals quoted from Dewbeck vs. Ship Building Corporation, 166 Md. 21 (1931), at p. 26:

"Under such circumstances, there would seem to be a clear denial to the Claimant of a right, recognized and enforced in all courts wherein truth and justice is the objective, for the parties to the cause to be confronted with the witnesses against them, and an opportunity to test the correctness or truthfulness of the evidence by cross-examination"

Such is not the situation in the instant case. The Paradise-East Catonsville Enhancement Study concerned a revitalization plan for a specifically defined area, which included the site of Appellants' proposed sign. The Study did not specifically address the issue in this case, but included this general area of Frederick Road as the subject of an official area Master Plan approved by the Baltimore County Planning Board in 1982 and by resolution of the Baltimore County Council thereafter. (T. 50-51)

The revitalization plan included certain goals and objectives for this general area of Frederick Road, as well as strategies and proposals to meet these goals and objectives. With adoption of the revitalization study by the Baltimore County Council, the Plan became part of the Comprehensive Zoning for Baltimore County. See, Baltimore County Charter, Section 523.

The evidence with respect to the relationship between Appellants' proposed sign and the revitalization plan was presented through witnesses who testified before the Board. Those witnesses were subject to cross-examination regarding whether the proposed sign was compatible with or inconsistent with the revitalization plan. Those witnesses were subject to cross-examination as to the opinions which they expressed. The revitalization plan was not the disputed adjudicative fact. The relationship of the proposed sign to the goals and objectives of the Plan was the matter for consideration. On this matter, live testimony was presented and the witnesses were subject to cross-examination.

For the above reasons, the Board committed no error in admitting the Paradise-East Catonsville Enhancement Study over Appellants' objection.

As to Appellant's second contention, the findings of the Board are clearly supported by substantial, material and probative evidence in this case. William Huey of the Baltimore County Office of Planning and Zoning testified that the proposed sign was not consistent with the Paradise-East Catonsville Enhancement Study, that this study had already been implemented by streetscaping and enhancement on the south side of Frederick Road and was approaching completion on the north side. (T. 52-53) He further testified that the sign was out of scale and would add clutter to what was an acceptable condition for the area without Appellant's proposed billboard. (T. 54)

Kimberly Piper of the Baltimore County Economic Development Commission testified that significant revitalization efforts had already been undertaken in the Paradise-East Catonsville Study area, with \$119,000 already spent on the south side and \$424,000 on the north side of Frederick Road. (T. 87)

Ms. Piper further testified on page 88 of the transcript,

"We (Economic Development Commission) are opposed to it. The Office's primary function is to work with designated revitalization areas, to work with the character of the neighborhood, the character they provide, the character that's there, provide assistance to improve the neighborhood, to keep its character, and to keep the health of the area which impacts directly on the health of the resident area surrounding it."

James Bailey, a neighbor in the area, also testified as to his concerns regarding the character of the neighborhood, the consequences to traffic on Frederick Road, if the sign were installed, and increased light on his property from the sign. (T. 73-76) He further testified as to the progress being made with the revitalization effort. (T. 73-75)

Appellants presented as witnesses, Barry Freedman, an employee with Penn Advertising of Baltimore, Inc., and Melvin Kabik, the owner of the property at issue. Both testified that the sign was within the zoning allowed and did not adversely impact on the health, safety and welfare of the general area. The Board, however, was not required to accept their testimony. There was certainly evidence offered to the contrary.

The Court of Special Appeals noted in Anderson v. Sawyer, 23 Md. App. 612 at page 617,

"If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide."

As already noted, the Paradise-East Catonsville Enhancement Study was adopted by the Baltimore County Council as an Amendment to the Comprehensive Plan. Thus, although Appellants' property on which the proposed sign was intended to be erected is properly zoned for the application of a special exception, Appellants' property is within an area which is subject to and benefits from the legislatively adopted enhancement plan.

The Board had testimony regarding the adverse impact of the proposed sign on the revitalization efforts for the general area to which Baltimore County had already committed approximately \$500,000. Mr. Bailey testified to the adverse impacts anticipated by him on his property, as well as on the area within the vicinity of the proposed sign site. The Board was obviously persuaded by this evidence that the Appellants had failed to meet their burden and, as a result, were not entitled to the grant of a Special Exception. There was substantial, material and competent evidence to support the Board's decision, and, consequently, the Board's decision was not arbitrary or capricious.

For the foregoing reasons, this Court AFFIRMS the County Board of Appeals for Baltimore County, with the costs of this Appeal to be paid Appellant.

JAMES T. SMITH, JR.  
JUDGE

DATE

JTS/ss

Copy: M. Albert Figinski, esq.  
Lindalee M. Kisznaul, Esq.  
Peter Max Zimmerman, Esq.